



# MUNICIPAL LAND USE LAW

## *New Jersey Statutes Annotated* *Historic Preservation Related Sections*

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION • DIVISION OF PARKS AND FORESTRY • HISTORIC PRESERVATION OFFICE

### INTRODUCTION

**MUNICIPALITIES IN NEW JERSEY** obtain their authority to identify, evaluate, designate and regulate historic resources (individual sites and districts) from the Municipal Land Use Law (MLUL), the enabling legislation for municipal land use and development planning, zoning, and, since 1986, historic preservation zoning. In response to requests for information on the sections of the MLUL pertaining to historic preservation zoning, the Historic Preservation Office (HPO) is excerpting and printing the following sections of the Municipal Land Use Law relevant to historic preservation planning and zoning and the creation of municipal Historic Preservation Commissions. The HPO has also provided a description of the requisites for participation in the Certified Local Government (CLG) program.

#### **C. 40:55D-25 POWERS OF PLANNING BOARD**

- A.** The planning board shall follow the provisions of this act and shall accordingly exercise its powers in regard to:
- (1) The master plan pursuant to article 3;
  - (2) Subdivision control and site plan review pursuant to article 6;
  - (3) The official map pursuant to article 5;
  - (4) The zoning ordinance including conditional uses pursuant to article 8;
  - (5) The capital improvements program pursuant to article 4;
  - (6) Variances and certain building permits in conjunction with subdivision, site plan and conditional use approval pursuant to article 7.
- B.** The planning board may:
- (1) Participate in the participation and review of programs or plans required by State or Federal law or regulation;
  - (2) Assemble data on a continuing basis as part of a continuous planning process; and
  - (3) Perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers.
- C.** In a municipality having a population of 2,500 or less, a nine-member planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of

section 57 of the act L. 1975 C. 291 (C.40:55D-70).

- D.** In a municipality having a population of 2,500 or less, the planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all of the powers of a historic preservation commission, provided that at least one planning board member meets the qualifications of a Class A member of a historic preservation commission and at least one member meets the qualifications of a Class B member of that commission.

#### **C. 40:55D-28 MASTER PLAN; PREPARATION; CONTENTS; MODIFICATION**

- A.** The planning board may prepare and, after public hearing, adopt or amend a master plan, or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.
- B.** The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (12):
- (1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the municipality are based;
  - (2) A land use plan element (a) taking into account and stating its relationship to the statement provided for in subsection (1) hereof, and other master plan elements pro-

**C. 40:55D-28  
(CONTINUED)**

- vided for in paragraphs (3) through (12) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands, (b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes or combination of purposes; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance; and (c) showing the existing and proposed location of any airports and the boundaries of any airport safety zones delineated pursuant to the "Air Safety and Zoning Act of 1983," P.L. 1983, c. 260 (C. 6:1-80 et seq.); and (d) including a statement of the standards of population density and development intensity recommended for the municipality;
- (3) A housing plan element pursuant to section 10 of P.L. 1985, c. 222 (C. 52:27D-310)(See \*Addendum\*), including, but not limited to, residential standards and proposals for the construction and improvement of housing;
- (4) A circulation plan element showing the location and types of facilities for all modes of transportation required for the efficient movement of people and goods into, about, and through the municipality, taking into account the functional highway classification system of the Federal Highway Administration and the types, locations, conditions and availability of existing and proposed transportation facilities, including air, water, road and rail;
- (5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of P.L. 1981, c. 32 (C.40:55D-93 et seq.);
- (6) A community facilities plan element showing the existing and proposed location and type of educational or cultural facilities, historic sites, libraries, hospitals, firehouses, police stations and other related facilities, including their relation to the surrounding areas;
- (7) A recreation plan element showing a comprehensive system of areas and public sites for recreation;
- (8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systematically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources;
- (9) An economic plan element considering all aspects of economic development and sustained economic vitality, including (a) a comparison of the types of employment expected to be provided by the economic development to be promoted with the characteristics of the labor pool resident in the municipality and nearby areas and (b) an analysis of the stability and diversity of the economic development to be promoted;
- (10) A historic preservation plan element: (a) indicating the location and significance of historic sites and historic districts; (b) identifying the standards used to assess worthiness for historic site or district identification; and (c) analyzing the impact of each component and element of the master plan on the preservation of historic sites and districts;
- (11) Appendices or separate reports containing the technical foundation for the master plan and its constituent elements; and,
- (12) A recycling plan element which incorporates the State Recycling Plan goals, including provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, and for the collection, disposition and recycling of recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land.
- C. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.
- D. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located (3) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act", P.L. 1985, c. 398 (C. 52:18A-196 et al.), and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," P.L. 1970, c. 39 (C. 13:1E-1 et seq.) of the county in which the municipality is located.

**C. 40:55D-65**  
**CONTENTS OF ZONING ORDINANCE**

**A ZONING ORDINANCE MAY:**

- A.** Limit and restrict buildings and structures to specified districts and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.
- B.** Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources.
- C.** Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 (C. 40:55D-37 et seq.) of this act. The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consideration of the amount, location and proposed use of common open space; the location and physical characteristics of the site of the proposed planned development; and the location, design and type of dwelling units and other uses. Such standards may, in order to encourage the flexibility of housing density, design and type, authorize a deviation in various residential clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated, shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.
- D.** Establish, for particular uses or classes of uses,

reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that section 41 (C. 40:55D-53) of this act shall apply to such improvements .

- E.** Designate and regulate areas subject to flooding (1) pursuant to P.L. 1972, c. 185 (C. 58:16A-55 et seq.) or (2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to P. L. 1962, c. 19 (C. 58:16A-50 et seq.) or floodway regulations pursuant to P.L. 1972, c. 185 or minimum standards for local fringe area regulations pursuant to P.L. 1972, c. 185.
- F.** Provide for conditional uses pursuant to section 54 (C.40:55D-67) of this act.
- G.** Provide for senior citizen community housing.
- H.** Require that as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.
- I.** Provide for historic preservation pursuant to section 5 of P.L.

**C. 40:55D-65.1**  
**HISTORIC DESIGNATIONS IN**  
**ZONING ORDINANCES**

A zoning ordinance may designate and regulate historic sites or historic districts and provide design criteria and guidelines therefor. Designation and regulation pursuant to this section shall be in addition to such designation and regulation as the zoning ordinance may otherwise require.

Except as provided hereunder, after July 1, 1994, all historic sites and historic districts designated in the zoning ordinance shall be based on identifications in the historic preservation plan element of the master plan. Until July 1, 1994, any such designation may be based on identifications in the historic preservation plan element, the land use plan element or community facilities plan element of the master plan. The governing body may, at any time, adopt, by affirmative vote of a majority of its authorized membership, a zoning ordinance designating one or more historic sites or historic districts that are not based on identifications in the historic preservation plan element, the land use plan element or community facilities plan element, provided the reasons for the action of the governing body are set forth in a resolution and recorded in the minutes of the governing body. L. 1991, c. 199, § 5, eff. July 9, 1991.

**C. 40:55D-107  
HISTORIC PRESERVATION COMMISSION**

- A.** The governing body may by ordinance provide for a historic preservation commission .
- B.** Every historic preservation commission shall include, in designating the category of appointment, at least one member of each of the following classes: Class A-a person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and, Class B-a person who is knowledgeable or with a demonstrated interest in local history and who may reside outside the municipality.
- C.** A historic preservation commission shall consist of five, seven or nine regular members and may have not more than two alternate members. Of the regular members a total of at least one less than a majority shall be of Classes A and B. Those regular members who are not designated as Class A or B shall be designated as Class C. Class C members shall be citizens of the municipality who shall hold no other municipal office, position or employment except for membership on the planning board or board of adjustment. Alternate members shall meet the qualifications of Class C members. The mayor or, if so specified by ordinance, the chairman of the planning board shall appoint all members of the commission and shall designate at the time of appointment the regular members by class and the alternate members as "Alternate No. 1" and "Alternate No. 2". The terms of the members first appointed under this act shall be so determined that to the greatest practicable extent, the expiration of the terms shall be distributed, in the case of regular members, evenly over the first four years after their appointment, and in the case of alternate members, evenly over the first two years after their appointment; provided that the initial term of no regular member shall exceed four years and that the initial term of no alternate member shall exceed two years. Thereafter, the term of a regular member shall be four years; and the term of an alternate member shall be two years. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only. Notwithstanding any other provision herein, the term of any member common to the historic preservation commission and the planning board shall be for the term of membership on the planning board; and the term of any member common to the historic preservation commission and the board of adjustment shall be for the term of membership on the board of adjustment. The historic preservation commis-

sion shall elect a chairman and vice-chairman from its members and select a secretary who may or may not be a member of the historic preservation commission or a municipal employee.

Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

- D.** No member of any historic preservation commission shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.
- E.** A member of a historic preservation commission may, after public hearing if he requests it, be removed by the governing body for cause.

**C. 40:55D-108  
EXPENSES AND COSTS**

- A.** The governing body shall make provision in its budget and appropriate funds for the expenses of the historic preservation commission.
- B.** The historic preservation commission may employ, contract for, and fix the compensation of experts and other staff and services as it shall deem necessary. The commission shall obtain its legal counsel from the municipal attorney at the rate of compensation determined by the governing body, unless the governing body, by appropriation, provides for separate legal counsel for the commission. Expenditures pursuant to this subsection shall not exceed, exclusive of gifts or grants, the amount appropriated by the governing body for the commission's use.

**C. 40:55D-109  
RESPONSIBILITIES**

The historic preservation commission shall have the responsibility to:

- A.** Prepare a survey of historic sites of the municipality pursuant to criteria identified in the survey report;
- B.** Make recommendations to the planning board on the historic preservation plan element of the master plan and on the implications for preservation of historic sites of any other master plan elements;

- C. Advise the planning board on the inclusion of historic sites in the recommended capital improvement program;
- D. Advise the planning board and board of adjustment on applications for development pursuant to section 24 of P.L. 1985, c. 516 (C.40:55D-110)
- E. Provide written reports pursuant to section 25 of P. L. 1985,
- C. 516 (C.40:55D-111) on the application of the zoning ordinance provisions concerning historic preservation; and
- F. Carry out such other advisory, educational and informational functions as will promote historic preservation in the municipality.

**C. 40:55D-110  
REFERRALS BY PLANNING BOARD AND  
BOARD OF ADJUSTMENT**

The planning board and board of adjustment shall make available to the historic preservation commission an informational copy of every application submitted to either board for development in historic zoning districts or on historic sites designated on the zoning or official map or in any component element of the master plan. Failure to make the informational copy available shall not invalidate any hearing or proceeding. The historic preservation commission may provide its advice which shall be conveyed through its delegation of one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted.

**C. 40:55D-111  
DESIGNATION AND REGULATION OF  
HISTORIC SITES OR DISTRICTS BY  
ORDINANCE; REFERENCE OF  
APPLICATIONS FOR ISSUANCE OF PERMITS  
TO COMMISSION; REPORT FOR GRANT,  
CONDITIONAL GRANT OR DENIAL**

If the zoning ordinance designates and regulates historic sites or districts pursuant to subsection i of section 52 of the act (C.40:55D-65), the governing body shall by ordinance provide for reference of applications for issuance of permits pertaining to historic sites or property in historic districts to the historic preservation commission for a written report on the application of the zoning ordinance provisions concerning historic preservation to any of those aspects of the change proposed, which aspects were not determined by approval of an application for development by a municipal agency pursuant to the act (C.40:55D-et seq.). The historic preservation commission shall submit its report either to the

administrative officer or the planning board, as specified by ordinance. If the ordinance specifies the submission of the historic preservation commission's report to the planning board, the planning board shall report to the administrative officer.

In the case of a referral by the administrative officer of a minor application for the issuance of a permit pertaining to historic sites or property in historic districts, as defined in the zoning ordinance, the chairman of the historic preservation commission may act in the place of the full commission for purposes of this section; and, if the ordinance specifies the submission to the planning board of a commission report on a minor application, the ordinance may authorize the chairman or a subcommittee of the planning board to act in place of the full board.

The historic preservation commission or the planning board, as the case may be, shall report to the administrative officer within 45 days of his referral of the application to the historic preservation commission. If within the 45-day period the historic preservation commission or the planning board, as the case may be, recommends to the administrative officer against the issuance of a permit or recommends conditions to the permit to be issued, the administrative officer shall deny issuance of the permit or include the conditions in the permit, as the case may be. Failure to report within the 45-day period shall be deemed to constitute a report in favor of issuance of the permit and without the recommendation of conditions to the permit.

**C. 40:55D-112  
"LANDMARK" AS A SUBSTITUTE FOR  
"HISTORIC"; "HISTORIC PRESERVATION"  
AND "HISTORIC SITE"**

The word "landmark" may substitute, in any ordinance, resolution, determination or official action pursuant to the act (C.40:55D-1 et seq.) and P.L. 1985, c. 516, (C.40:55D-107 et seq.) for "historic", "historic preservation" and "historic site".

L. 1985, c. 516. § 26, et'f. Mar. 22, 1986.

**ADDENDUM  
C. 52:27D-310  
MANDATORY CONTENTS OF  
HOUSING ELEMENT**

A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing, and shall contain at least:

- A. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate

income household and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

- B.** A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next six years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- C.** An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- D.** An analysis of the existing and probable future employment characteristics of the municipality;
- E.** A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and
- F.** A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low



and moderate income housing.

The Certified Local Government (CLG) program offers municipalities the opportunity to participate more directly in state and federal historic preservation programs. New Jersey's current CLG participants include the boroughs of Berlin, Collingswood, Haddonfield and Haddon Heights (all Camden County), borough of Glen Ridge (Essex County), North Plainfield (Somerset County) and Pompton Lakes (Passaic County), the cities of Camden (Camden County), Paterson (Passaic County), and Plainfield (Union County), the town of Newton (Sussex County), and the townships of Ewing, Lawrence, Princeton and borough of Princeton (all Mercer County), Montville and Washington (both Morris County), Middletown (Monmouth County), Mount Holly (Burlington County), and West Milford (Passaic County).

One of the benefits of Certified Local Government designation is access to Historic Preservation Fund 60% federal/40% local matching grants reserved exclusively for historic resources survey, preservation planning and pre-development projects undertaken by Certified Local Governments. New Jersey annually awards \$50,000 - \$60,000 in Historic Preservation Fund grants to our CLGs.

Historic Preservation Fund matching grants may be used to sponsor a wide variety of historic preservation projects: historic resource surveys; site specific, historic district or municipal historic preservation plans; technical assistance to municipal historic preservation commissions; historic landscape, rural farmland or thematic historic property studies; architectural design guidebooks; historic preservation public education; National Register of Historic Places nominations; and other innovative historic preservation activities proposed by CLGs.

Pre-development matching grant funds, also on a 60/40 basis, are available for properties listed on the National Register of Historic Places. Eligible projects include the preparation of: historic structures reports; adaptive re-use plans, specifications and construction documents; and archaeological resource protection or stabilization plans. Pre-development projects must be in conformance with the "Secretary of the Interior's Standards for Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings."

Participation in the Certified Local Government program requires that a municipality have a historic preservation ordinance and a historic preservation commission conforming to the specifications of both the New Jersey enabling legislation, the Municipal Land Use Law

(MLUL), and the National Park Service approved New Jersey Certified Local Government Guidelines. Governments requesting certification are required to submit an application and demonstrate that they meet the basic CLG program guidelines.

The CLG guidelines require due process and maximum public participation in the administration of the local historic preservation ordinance. All historic preservation commission decisions to designate individual historic sites and districts must be based upon criteria written into the local ordinance and must afford the public an opportunity to comment on the proposed designation at an open public meeting. The Certified Local Government guidelines require all commission meetings to be publicly announced and open to the public, have an advertised agenda, and be held in accordance with the New Jersey "Open Public Meetings Act."

Additionally, commission decisions must be made in a public forum and applicants must be notified of meetings and advised of the decisions of the commission. These public participation provisions are designed to ensure that the designation of historic sites and districts results from a genuine interest in and commitment to local historic preservation by the residents of individual neighborhoods and the community at large. There must also be a clear appeals process to provide applicants and others the opportunity to appeal decisions made by the local historic preservation commission.

The Historic Preservation Office encourages efforts to promote local historic preservation. If you have any questions regarding the Certified Local Government program or would like a copy of the CLG Guidelines and application, please contact the Historic Preservation Office, CLG Program Coordinator.



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